

12/04/08

PROPOSED CHARGING LETTER

Benoit Bazire  
CEO  
Qioptiq S.a.r.l.  
5 Rue Guillaume Kroll L  
1882 Luxembourg  
R.C.S. Luxembourg B 111.139

Re: Investigation of Qioptiq Group Regarding Potential Violations  
of the Arms Export Control Act and the International Traffic in  
Arms Regulations

Dear Mr. Bazire,

The Department of State (Department) charges Qioptiq S.a.r.l. (Respondent) with violations of the Arms Export Control Act, as amended, (the AECA) (22 U.S.C. 2778) and the International Traffic in Arms Regulations (ITAR) (22 C.F.R. Parts 120-130) in connection with unauthorized exports and retransfers of United States origin ITAR controlled technical data and other matters as set forth herein concerning the Respondent's business activities. One hundred sixty-three (163) violations are alleged at this time. The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend this proposed charging letter, which may include specifying, additional violations. Pursuant to § 128.3 of the ITAR, this proposed charging letter provides notice of our intent to impose debarment and/or civil penalties.

The Department considered the Respondent's Voluntary Disclosures as a significant mitigating factor when determining the charges to pursue in this matter. Many of the violations identified in this proposed charging letter, however, were not voluntarily disclosed but were uncovered based on directed questioning by the Government. The Respondent was cooperative and responsive to these inquiries. Given the significant national security interests involved as well as the systemic and longstanding nature of the

violations, the Department has decided to charge the Respondent with one hundred sixty-three (163) violations at this time. Had the Department not taken into consideration as significant mitigating factors the Respondent's Voluntary Disclosures, the fact that the violations were committed prior to the Qioptiq Group acquisition of the violating business units and the remedial measures implemented, the Department could have charged the Respondent with additional violations, and could have pursued more severe penalties.

### BACKGROUND

On December 22, 2005, Eye 3 S.a.r.l. purchased from Thales France (Thales S.A.) certain Thales High Technology Optic Group companies to include Thales Electro-Optics Pte Limited, Singapore (Thales Singapore), Thales Optical Coatings, Limited, UK, and Thales Optem, Inc., NY (Thales, NY). These Thales High Technology Optics Group companies and the other acquired Thales High Technology Optics Group companies, all identified herein using either their prior Thales names or subsequent Qioptiq names (all collectively referred to as the Qioptiq Group) were primarily involved in the manufacturing of quality optical components used in both commercial and military applications. On April 16, 2006, Eye 3 S.a.r.l. changed its name to Qioptiq S.a.r.l. (as noted above, Respondent).

A large portion of Thales Singapore's (and its predecessors) business was and continues to be the manufacturing of military optics used in night vision equipment. US night vision equipment manufacturers relied heavily on the Singaporean facility for supplying optical components, sub-assemblies and related parts. Both Thales Singapore and its predecessor Avimo Electro Optic, Singapore (Avimo Singapore) were important suppliers to ITT Night Vision. Thales Optical Coatings Limited, UK and its predecessor Avimo Thin Films Technology were involved with ITT-NV in the unauthorized export of ITAR classified technical data that became the subject of a Department of Justice criminal investigation initiated in 2001.

One day before being purchased by the Respondent, Thales filed an initial notification of a Voluntary Disclosure with the Department regarding Thales, Singapore. This notification and copies of reports filed in conjunction with the Department of Justice criminal investigation described numerous recurrent violations involving US origin ITAR technical data and night vision parts, and involved world-wide unauthorized re-exports including to three proscribed countries.

Respondent, after the acquisition of the Qioptiq Group on December 22, 2005, embarked on a complete compliance review and overhaul of the newly acquired business units. In March of 2006 the Respondent provided a § 127.12 notification of Voluntary Disclosure covering all Thales acquired business units. This disclosure only covered a review period occurring after the 2005 acquisition. Therefore, at the direction of the Department, the Respondent extended its review period back five years and in some instances even further. The violations that were committed are not limited to the Qioptiq Group business units, but also include violations committed by their predecessors<sup>1</sup>, including the Thales High Technology Optic Group business units.

### Qioptiq USA

#### Unauthorized Exports to Singapore

In 2004, following pressure from ITT Night Vision urging the establishment of such an arrangement, Thales NY and Thales Singapore hired a US person optical engineer to be an interface between Singapore and US customers. The engineer was assigned to Thales NY, but was employed and paid by Thales Singapore. Although the US person optical engineer worked with other US customers, his primary function was to assist ITT-NV with its Enhanced Night Vision Goggle (ENVG) program.

Thales NY applied for and received Departmental authorization for a Technical Assistance Agreement (TAA) that would allow Thales NY to provide Thales technical data on night vision equipment to Thales Singapore. However, this TAA did not cover ENVG data and did not disclose that technical data to be exported belonged to ITT Night Vision<sup>2</sup>. By September of 2005, Thales NY had exported without authorization technical data for the entire ITT ENVG optical train to Singapore using this engineer as a conduit. For each export, Thales NY made false statements that the ENVG exports were approved under the Thales NY/Thales Singapore TAA. Further, the nature of these ITT Night Vision ENVG exports was concealed by marking the technical data as “SNVG” (Special

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<sup>1</sup> Thales France acquired these businesses at the end of 2001. Prior to that date Thales Electro-Optics was Avimo Electro-Optics and Thales Optic Coatings was Avimo Thin Films Technologies.

<sup>2</sup> In its November 7, 2008 letter, Thales disputes that the subject TAA did not cover ENVG data. This objection is not supported by the facts as documented in the ITT Plea Agreement, Statement of Facts Appendix A (see pp 30-34).

Night Vision Goggle). In an email to Thales Singapore, the engineer characterized the use of the “SNVG” label as a “decoy.”

#### Unauthorized Exports to Israel

In 2005 Respondent’s Qioptiq Polymer California predecessor company, Thales Polymer Optics, Inc., California (Thales California) made unauthorized exports of ITAR controlled lenses, technical data and defense services to Israel for use in a precision laser guidance system. Thales California also made unauthorized exports of ITAR controlled lenses to Singapore and France.

#### Qioptiq Singapore

#### Unauthorized Re-exports to PRC and Others

Between 2001 and 2005 on numerous occasions Thales Singapore made derivative drawings from US origin ITAR technical data, and did not control them as US origin ITAR technical data. Thales Singapore subsequently retransferred ITAR technical data, original and derivative, without Department authorization to subcontractors in the Peoples Republic of China (PRC), a proscribed country and to Singaporean subcontractors in violation of a proviso prohibiting subcontracting. The predecessor company to Thales Singapore, Avimo Singapore, was also involved in the unauthorized sublicensing of lenses and parts to manufacturers in the PRC. Additionally, third country nationals from China, Myanmar, India, Indonesia Germany and Malaysia worked at the Thales/Avimo Singapore facility and were provided with ITAR technical data without authorization.

Between 2001 and 2005, Thales Singapore, on numerous occasions without Department authorization, manufactured and exported from Singapore ITAR controlled night vision subassemblies and other parts for night vision goggles, night vision weapon sights and other night vision equipment to US and non-US customers in NATO countries, Israel, Egypt, Pakistan and Cyprus. The ITAR controlled night vision parts and subassemblies were made using ITAR controlled technical data that had been provided to Thales Singapore and its predecessor, with and without Department authorizations, and were treated by Thales Singapore as being under the exclusive jurisdiction of the Singapore Strategic Goods Act, not the ITAR. Required Department retransfer authorizations were not obtained.

### Unauthorized Re-exports to Iran

In a March 2006 Thales report to the Department of Justice, night vision sales to Iran by Avimo Singapore were briefly mentioned. Iran is a proscribed country. At the direction of Directorate of Defense Trade Controls (DDTC), Respondent reviewed past ITAR controlled business transactions of Thales Singapore and its predecessor Avimo Singapore. This DDTC directed 2007 review revealed that for a ten year period, from 1985 to 1995, Avimo Singapore had a contract with and exported to Iran Electronics Industries (IEI) hardware, manufacturing equipment, technical data, and know-how to manufacture in Iran three Avimo Singapore night vision systems. All three of these systems involved derivative designs based in part on U.S. origin ITAR technical data exported to Singapore, and therefore required a Department authorization before they could be retransferred.

The articles and technology exported were limited to weapons and surveillance night vision systems optics and housings and did not include image intensifier tube technology or manufacturing know-how. Iran used European manufactured image intensifier tubes for its production of these night vision devices. IEI is an important Iranian defense manufacturer. On Sept. 17, 2008 the U.S. Department of the Treasury, Office of Foreign Assets Control added IEI to its Special Designated Nationals List prohibiting all transactions with any U.S. person.

### Unauthorized Re-exports to Cyprus

On December 18, 1992, the Department published a Federal Register notice denying ITAR controlled items to any of the armed forces in Cyprus. This policy of denial is still in effect today. However, during the period of 1992 to 1999 Thales Singapore's predecessor company Avimo Singapore, entered into a contract with the Cyprus Ministry of Defense (MOD) for the sale of night vision products, spare parts, maintenance tools and training. As a result of this contract, night vision equipment involving derivative designs based in part on U.S. origin ITAR technical data was shipped without authorization to the Cyprus MOD. This export to Cyprus was also in violation of the Department's ITAR sanctions. Additionally, on May 20, 2002, without authorization Thales Singapore shipped to the Cyprus MOD a piece of night vision equipment that included components that were derived from ITAR technical data again in violation of imposed Department ITAR sanctions.

## Qioptiq UK

### Unauthorized Exports and Misuse of Classified Information

For many years prior to its December 22, 2005 acquisition by Respondent, Thales Optics Limited., UK subcontracted with non-US companies in Belgium, Germany, Netherlands, Singapore, Switzerland and the UK, and then on numerous occasions without Department authorization provided US origin ITAR controlled technical data to these subcontractors. Additionally, Avimo Thin Films Technology and Thales Optical Coatings Limited, UK knowingly used classified NV filter specifications illegally exported by ITT-NV to manufacture filter coatings even though it was not authorized as a secure facility.

## Qioptiq Germany and Hungary

### Unauthorized Re-exports to Russia and Others

On May 12, 2005, prior to becoming Qioptiq GmbH, Thales Optische Systeme GmbH, Germany (Thales Germany), received two ITAR controlled technical drawings from Thales Singapore. The drawings were exported from Thales Singapore for an IR focal lens project of Thales NY. On this same day, Thales Germany retransferred the ITAR lens specifications to Thales Optikai Rendszerk Kft, Hungary (Thales Hungary) (now called Qioptiq Optikai Rendszerk Kft) without Department authorization. The next day Thales Hungary retransferred the ITAR lens specifications to a firm in Germany and another in Russia without Department authorizations.

## Lack of ITAR Compliance – Qioptiq Group

At the direction of the Department, Respondent conducted an in depth review of the Qioptiq Group's past involvement into the ITAR violations surrounding the ITT criminal conviction. The Respondent reviewed records from Thales Singapore, Thales UK and Thales US. These internal records described business units involved in ITAR regulated activities with limited or no ITAR training and a longstanding lack of support for ITAR compliance. These systemic compliance problems are further evidenced by the following documented occurrences:

- Notwithstanding the knowledge of violations between Thales NY and Thales Singapore dating back to 2003 by Thales management, Thales

took no action until December of 2005, notably one day before the sale of the Qioptiq Group to Respondent. At this time, Thales filed an initial notification of disclosure to the Department regarding the unauthorized retransfer of optical subassemblies and parts world-wide and the unauthorized retransfer of ITAR derived technical data. This failure to disclose these violations is notable in light of a 2003 internal Thales corporate training presentation which advised its employees that one factor to consider when deciding whether to make (and implicitly for deciding not to make) a disclosure to the Department is the risk of discovery of the violation by a U.S. company or U.S. authorities<sup>3</sup>.

- Prior to 2003, Thales Singapore had received limited training from Thales S.A. concerning export compliance. Thales Singapore personnel described ITAR training as incomplete and that sometimes the advice received on the ITAR was incorrect. Thales Singapore did not become more aware of the ITAR until after the ITT criminal investigation was initiated and it was involved in a Voluntary Disclosure that was drafted by Thales Optronics, B.V. in the Netherlands.
- In 2003, as the result of the ITT criminal investigation, Thales Singapore sought assistance from Thales US in setting up an ITAR compliance program. Thales US was willing to assist but such assistance was discouraged by Thales S.A. In an August 2003 email from Thales S.A. to Thales Singapore, a corporate export compliance officer questioned the need for seeking such assistance noting “By experience when you call for a US advisor on export control, he will play by the book and drive you to implement a strict (and so a costly) procedure. If you hire a US advisor you will not finish with the only voluntary disclosure we are having in mind today, but he will push you to clean up all the past!”
- A May of 2003 memo from Thales North America’s (TNA) export control counsel stated that Thales Optem, NY (predecessor to Qioptiq Imaging Solutions, NY), “has no export control policies and no knowledge of export laws and regulations. I recommend that oversight of exporting activities of Optem be centralized with TNA

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<sup>3</sup> Thales explains this statement on a internal corporate training Rower Point presentation “as an instance of imprecise language.”

for the foreseeable future and that the Export Control Policies and Procedures developed by TNA for Optem should be implemented.”

- In late 2004, a “US person” engineer employed by Thales Singapore but working at Thales NY realized that exports had begun under a TAA prior to it being signed and were therefore made without authorization. The engineer contacted Thales North America and was directed to contact its outside counsel for ITAR guidance. The engineer discussed submitting a Voluntary Disclosure with Thales North America’s outside counsel. Thales North America decided not to submit a Voluntary Disclosure and advised the engineer that no further action was necessary. According to Thales’ outside counsel further requests for ITAR guidance by this engineer went unanswered because Thales North America would not authorize the outside counsel to advise the engineer on other ITAR issues.
- A January 2007 disclosure submitted by the Respondent reported that Thales UK staff stated they were not adequately briefed or trained in ITAR compliance by their management and overall compliance resources were limited.

### JURISDICTION

Respondent is a corporation organized under the laws of Luxembourg.

Respondent is a foreign person within the meaning of the AECA and the ITAR, and is subject to the jurisdiction of the United States.

During the period covered by the violations set forth herein, Respondent’s predecessor companies were engaged in the manufacture, export, and re-transfer of defense articles and defense services. Its US subsidiary, Thales North America, was registered as a manufacturer and an exporter with the Department of State, Directorate of Defense Trade Controls (“DDTC”) in accordance with section 38 of the AECA and §122.1 of the ITAR.

The defense articles, night vision equipment, technical data and components, associated with the violation(s) outlined are controlled under Category XII of the US Munitions List (“USML”), §121.1 of the ITAR.



Technical data, as defined in §120.10 of the ITAR, for night vision equipment is controlled under Category XII (f) of the US Munitions List (“USML”), §121.1 of the ITAR.

Defense services, as defined in §120.9 of the ITAR, for night vision equipment, are controlled under Category XII (f) of the USML, §121.1 of the ITAR.

### RELEVANT ITAR REQUIREMENTS

Part 121 of the ITAR identifies the items that are defense articles, technical data, and defense services pursuant to section 38 of the AECA.

Section 127.1(a)(1) of the ITAR provides that it is unlawful to export or attempt to export from the United States, or to re-export or retransfer or attempt to re-export or retransfer from one foreign destination to another foreign destination by a US person of any defense article or technical data or by anyone of any US origin defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from DDTC.

Section 127.1(a)(4) of the ITAR provides that it is unlawful to violate the terms or conditions of licenses or approvals.

Section 123.22 of the ITAR provides that any export of a defense article controlled by this subchapter requires electronic reporting of export information.

Section 126.1(a) of the ITAR provides that it is the policy of the United States to deny, among other things, licenses and other approvals, destined for or originating in certain countries, including the Peoples Republic of China (PRC)<sup>4</sup> and Cyprus.

Section 126.1(e) of the ITAR provides that anyone that knows or has reason to know of a proposed or actual sale, or transfer, of a defense article, defense

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<sup>4</sup> Section 902 of the Foreign Relations Authorizations Act, Fiscal Years 1990 and 1991 (P.L. 101-246) prohibits the issuance of licenses for the export of any defense articles and defense services to the PRC unless the President makes a determination authorizing the export.

service or technical data to a proscribed country, such as the Peoples Republic of China, Iran and Cyprus, must immediately inform DDTC.

Section 125.3(b) of the ITAR provides that classified technical data which is approved by the Directorate of Defense Trade Controls either for export or re-export after a temporary import will be transferred or disclosed only in accordance with the requirements in the Department of Defense National Industrial Security Program Operating Manual (NISPOM), unless such requirements are in direct conflict with guidance provided by DDTC, and other requirements imposed by cognizant U.S. departments and agencies.

Section 127.2(a) of the ITAR provides that it is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or furnishing of any defense service for which a license or approval is required by the ITAR. Section 127.2(b) of the ITAR provides that a Shipper's Export Declaration (SED), and any application for a permanent export license are such export or temporary import control documents.

Section 127.1(d) of the ITAR provides that it is unlawful to knowingly or willfully cause, or aid, abet, counsel, demand, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C §2778, 22 U.S.C. §2779, or any regulation, license, approval or order issued thereunder.

## CHARGES

### Charges 1-10 - Unauthorized Exports of ITAR Technical Data.

Respondent violated sections 127.1(a)(1), 127.1(a)(4), and 127.1(d) of the ITAR when Qioptiq NY exceeded the scope of TAA 1236-04 by exporting ITT-NV ENVG technical data to Singapore and by exporting prior to the execution of the agreement.

### Charge 11 - Unauthorized Transfers of Classified ITAR Technical Data.

Respondent violated section 125.3(b) of the ITAR when Qioptiq UK used and stored classified ITAR technical data illegally exported at an unsecured foreign facility.

Charge 12 - Misrepresentation and Omission of Facts.

Respondent violated section 127.2(a) of the ITAR when Qioptiq NY filed export control documents containing false statements that the exports of ITT-NV ENVG technical data were authorized under TAA 1236-04.

Charges 13-93 - Unauthorized Re-transfer of ITAR Technical Data to the Peoples Republic of China.

Respondent violated sections 127.1(a)(1) and 126.1 (a)(1) of the ITAR when Qioptiq Singapore retransferred ITAR controlled technical data to PRC employees and subcontractors in the PRC, a proscribed country, without authorization.

Charges 94-107 - Unauthorized Exports of Defense Articles.

Respondent violated section 127.1(a)(1) of the ITAR when Qioptiq California exported defense articles to Israel, France and Singapore without authorization.

Charges 108-120 - Unauthorized Retransfer of ITAR Technical Data.

Respondent violated sections 127.1 (a)(1) and 127.1(a)(4) of the ITAR when Qioptiq Singapore retransferred ITAR controlled technical data (exported to Singapore with and without authorization) to third country foreign national employees and subcontractors prohibited by proviso in Singapore without authorization.

Charges 121-150 - Unauthorized Retransfer of Defense Articles.

Respondent violated section 127.1(a)(1) of the ITAR when Qioptiq Singapore re-transferred night vision components manufactured using US ITAR controlled technical data to NATO countries, Israel, Egypt, and Pakistan without authorization.

Charge 151 - Unauthorized Retransfer of a Defense Article to Iran.

Respondent violated sections 127.1(a)(1) and 126.1(a)(1) of the ITAR when Qioptiq Singapore transferred US ITAR controlled technical data, and defense articles manufactured using US ITAR controlled technical data, to Iran, a proscribed country, without authorization.

Charges 152-153 - Unauthorized Retransfer of a Defense Article to Cyprus.

Respondent violated sections 127.1(a)(1) and 126.1(a)(1) of the ITAR when Qioptiq Singapore transferred a defense article manufactured using US ITAR controlled technical data to Cyprus, a proscribed country, without authorization.

Charges 154-163 - Unauthorized Retransfer to Russia and Other Countries.

Respondent violated sections 127.1 (a)(1) and 127.1(a)(4) of the ITAR when Qioptiq Singapore retransferred ITAR controlled technical data to subcontractors in Belgium, Germany, Hungary, Russia, the Netherlands, Singapore, Switzerland and the United Kingdom without authorization.

ADMINISTRATIVE PROCEEDINGS

Pursuant to Part 128 of the ITAR, administrative proceedings are instituted by means of a charging letter against Respondent for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$500,000 per violation, may be imposed as well in accordance with Section 38(e) of the AECA and §127.10 of the ITAR.

A Respondent has certain rights in such proceedings as described in Part 128 of the ITAR. Currently, this is a proposed charging letter. However, in the event that you are served with a charging letter, you are advised of the following matters: You are required to answer the charging letter within 30 days after service. If you fail to answer the charging letter, your failure to

answer will be taken as an admission of the truth of the charges. You are entitled to an oral hearing, if a written demand for one is filed with the answer, or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that you are served with a charging letter, your answer, written demand for oral hearing (if any) and supporting evidence required by §128.5(b) of the ITAR, shall be in duplicate and mailed to the administrative law judge designated by the Department to hear the case. The U.S. Coast Guard provides administrative law judge services in connection with these matters, so the answer should be mailed to the administrative law judge at the following address: USCG, Office of Administrative Law Judges G-CJ, 2100 Second Street, SW Room 6302, Washington, D.C. 20593. A copy shall be simultaneously mailed to the Director of the Office of Defense Trade Controls Compliance, Department of State, 2401 E. Street, NW, Washington, D.C. 20037. If you do not demand an oral hearing, you must transmit within seven (7) days after the service of your answer, the original

or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. Please be advised also that charging letters may be amended from time to time, upon reasonable notice. Furthermore, pursuant to §128.11 of the ITAR, cases may be settled through consent agreements, including after service of a proposed charging letter.

Be advised that the US Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the AECA and the ITAR. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

David C. Trimble  
Director  
Office of Defense Trade Controls Compliance